

**REQUEST FOR PROPOSAL
FOR
CABLE TELEVISION RENEWAL LICENSE**

**TO
COMCAST OF MASSACHUSETTS II, INC.**

**TOWN OF AMHERST
MASSACHUSETTS**

January 30, 2006

**Response Deadline
February 28, 2006 at 3:00 p.m.**

I. INTRODUCTION

In accordance with Section 626 of the Cable Communications Policy Act of 1984 (the "1984 Cable Act"), the Town of Amherst (the "Town") has conducted ascertainment in order to identify and analyze a number of issues in connection with the renewal of the current Cable Television Renewal License (the "Cable License"), which was granted by the Town of Amherst, through its Select Board acting as Issuing Authority, to Cox Communications Amherst, Inc. , with an "Effective Date" of July 1, 1996.

II. FORMAT OF THIS RFP AND THE RESPONSE THERETO

This Request for Proposal ("RFP") contains: (i) this RFP document, (ii) Ascertainment Documents, and (iii) a Proposed Renewal License incorporating the Town's identified "future cable-related community needs and interests".

The Licensee should demonstrate how its proposal will meet the the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests, as follows:

1. The Licensee must respond to and answer all questions and requests for information included in the RFP.

2. The Licensee must submit a proposed Renewal License which shall be formulated strictly as a modification of the proposed Renewal License submitted as part of this RFP by the Town. The revisions and modifications shall be shown on the proposed Renewal License (i.e. track change).

3. In the Licensee's proposed Renewal License or in a separate document, the Licensee must include the following for each revision and modification: (i) a justification of the proposed modification, and (ii) any relevant references or precedents in support of said revision(s) and modification(s). Wherever the Licensee's proposal would reduce or eliminate a benefit which is included in the RFP, the Licensee's proposal must provide a justification of such a reduction, based on the Town's cable-related needs and interests, including any compensating or offsetting benefits the Licensee believes will accrue to subscribers and/or the Town.

4. In evaluating the Licensee's Proposal, the Town will consider whether the Licensee's Proposal is reasonable to meet the cable-related community needs and interests, taking into account the cost of meeting such needs and interests, as provided for in Section 626(c) of the Cable Act.

III. DEADLINE FOR SUBMISSION OF PROPOSAL

The deadline for submission of a proposal is Tuesday, February 28, 2006 at 3:00 p.m.

The Town will agree to an extension of time if requested by the Licensee.

IV. TRANSMITTAL OF PROPOSAL

The Licensee should submit one (1) original and six (6) copies of its Renewal Proposal, in looseleaf binders or by another suitable binding method together with an electronic copy of all portions of the Renewal Proposal which the Licensee has in electronic format to Barry L. Del Castilho, Town Manager, Amherst Town Hall, 4 Boltwood Avenue, Amherst, Massachusetts 01002. The electronic copy should be provided on a CD and a floppy disc or in the alternative, the Licensee may make arrangements with the Town Manager to e-mail the electronic copy as directed by the Town Manager. The Licensee should also send one (1) copy of its renewal proposal directly to the Chair of the Cable Advisory Committee, William Venman at the same Town Hall address. An additional copy of the RFP should be sent to Town's Special Cable Counsel, William H. Solomon, 319 Main Street, Stoneham, Massachusetts 02180 within seven (7) days of the date upon which the Renewal Proposal has been submitted to the Town Manager and Chair of the Cable Advisory Committee..

V. DETERMINATION REGARDING RENEWAL OR PRELIMINARY ASSESSMENT OF NON-RENEWAL BY THE SELECT BOARD AS ISSUING AUTHORITY

The Select Board, as Issuing Authority will make its determination regarding the RFP submitted by the Licensee pursuant to Section 626(c)(1) of the 1984 Cable Act (47 U.S.C. 547) within four (4) months of the date of the submission of the Licensee's proposal, unless an extension thereof is agreed to by the parties or otherwise legally authorized.

In accordance with Section 626(c)(1) of the Cable Act, the Select Board shall:

Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b) of this section, the franchising authority shall provide prompt public notice of the proposal and, during the 4-month period which begins on the date of submission of the cable operator's proposal pursuant to subsection (b) of this section, renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding ... to consider whether – the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

In any proceeding under paragraph [Section 626(c)(1)] (1), the cable operator shall be afforded adequate notice and the cable operator and the franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence, related to issues

raised in the proceeding under subsection (a), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding. At the completion of a proceeding under this section, the franchising authority shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefore.

VI. QUESTIONS REGARDING THE RFP

All questions regarding this RFP, including, but not limited to questions regarding procedures or interpretation, may be posed in writing to the Chair of the Cable Advisory Committee, William Venman, at Amherst Town Hall, 4 Boltwood Avenue, Amherst, Massachusetts 01002., with a copy to William H. Solomon, Special Cable Counsel, 319 Main Street, Stoneham, Massachusetts 02180 (Faxed correspondence and telephone calls must be followed-up by the mailing or delivery of said inquiry in order to be deemed a formal inquiry.)

VII. TOWN OF AMHERST, MASSACHUSETTS

- Population: 35,228
- Senior Population (65 years of age and older): 6.6%
- Land Area: 27.68 square miles

VIII. REQUEST FOR INFORMATION

The Licensee must provide all of the following information with its Proposal:

A. Financial and Operating Information

The Licensee's proposal must include the following information with respect to each of the following areas and/or entities: (i) the Licensee's Amherst franchise area; (ii) the system/general ledger which includes the Amherst franchise area; and (iii) Comcast of Massachusetts II, Inc.

Financial Information

- a. Full Financial Statements, including all of the following for each of the last five (5) years:
 - i. Income statements
 - ii. Balance sheets
 - iii. Cash flow statements
 - iv. Any footnotes that are or may be necessary to understand the above.
- b. Financial projections for the next ten (10) years, including:
 - i. Income statements
 - ii. Balance sheets

- iii. Cash flow statements
 - iv All footnotes indicating assumptions made, including projected operating statistics.
- 3. The Applicant should submit its projected operating statistics for each of the ten (10) years of a license term in the Town of Amherst, including:
 - a. Number of miles of distribution plant
 - b. Number of homes passed
 - c. Number of cable subscribers by type.
- 4. The Applicant should submit its anticipated operating Projections for each of the ten (10) years of a license term in the Town of Amherst, including:
 - a. Detailed revenue by type, including:
 - i. Subscriber Revenues
 - a. Installation Income
 - b. Equipment Revenue
 - c. Basic/Other Tier Subscriber Revenue
 - d. Premium Channel Revenue
 - e. Pay Per View Revenue
 - f. On Demand/Interactive Cable Revenue
 - g. Other Subscriber Revenue - including all revenue attributable to cable operations not included above.
 - ii. Non Subscriber Revenues
 - a. Advertising Income
 - b. Home shopping Revenue
 - c. Other Income - all other income including income attributable to leasing or sale of time or facilities.
 - b. Detailed expenses by type, including:
 - i. Direct Operating Expenses
 - a. Programming Expenses
 - b. Net Bad Debt and Collection Expenses
 - c. Salaries and Benefits
 - d. Repairs and Maintenance
 - e. Light, Heat, Power
 - f. Pole and Duct Rental
 - g. Administration - Office and Billing
 - h. Marketing
 - i. Local Origination
 - j. Other - All other direct operating costs not included above.
 - ii. Depreciation and Amortization
 - a. Depreciation

b. Amortization

c. Capital Expenditures

The Applicant is encouraged to submit any other financial information reflecting upon the financial condition and/or financial qualifications of each of the above referenced three (3) levels: (i) the License's Amherst franchise area; (ii) the system/general ledger which includes the Amherst franchise area; and (iii) Comcast of Massachusetts II, Inc.

B. *Franchise Related Costs*

The Licensee's proposal must itemize all local franchise related costs anticipated to occur over the term of the Renewal License, specifically identifying those costs that the Licensee intends to treat as external costs pursuant to FCC rate regulations or which it intends to add onto maximum permitted rates as a separate line item on a subscriber bill.

Please specifically identify in detail the amount of local franchise costs which are included in your current rates for the Town of Amherst, and how these costs are reflected in the rate, i.e. treated as external costs, embedded in the residual portion of the rates, or added onto maximum permitted rates as a separate line item on a subscriber bill.

Wherever the Licensee's proposal would reduce or eliminate a benefit received by the Town pursuant to the current Renewal License, including with respect to PEG Access support or funding, the Licensee's proposal must also itemize any changes in Licensee's costs expected from each such reduction, and should itemize those costs which will be deducted from external costs or the residual portion of the rates, as required by FCC regulations.

C. *Public Educational and Government Access - Capital Plan and Budget*

The Licensee must prepare and submit with its Proposal, an estimated PEG Access capital plan and budget specifying all equipment and the cost thereof, including installation and setup costs, which the Town, the Amherst Public Schools, the Amherst-Pelham Regional School District, and the Town's Access Corporation can reasonably be expected to incur to provide the PEG Access operations and programming as reflected by the Licensee's Capital Proposal.

D. *Local Emergency Alert*

The Licensee shall in its proposal, include specifications for a Local Emergency Alert, including a reasonably detailed estimate of cost, regardless of its position on the inclusion of a Local Emergency Alert in the Renewal License.

VIII. ASCERTAINMENT AND ASCERTAINMENT

DOCUMENTS - FUTURE CABLE-RELATED COMMUNITY NEEDS AND INTERESTS

A summary of the Town's Ascertainment documents are referenced below. The documents, which include the proposed Renewal License, reflect the Town's "future cable-related community needs and interests, taking into account the cost of meeting such needs and interests" (except as described in the paragraph below with respect to PEG Access capital funding). Rather than providing an extensive description of community needs and interests, the community needs and interests are described in Ascertainment documents, including in the proposed Renewal License.

Please note that the proposed Cable Television Renewal License does not include a dollar amount with respect to PEG Access Capital Funding (Section 7.3). The Capital Funding/Equipment dollar amounts included with this RFP (See Community Needs Assessment and Recommendations Regarding Cable-Related Needs And Interests For The Town Of Amherst Massachusetts", including Appendix 8 "Capital Equipment Replacement Proposal For Public Access") reflects Amherst's future cable-related community needs and interests. Comcast should include in its proposed Renewal License a specific capital amount for PEG Access. If Comcast claims that the capital funding should be less than the amount the Town contends is needed to meet the cable-related needs and interests (for instance if Comcast contends that the capital amount should be less after taking into account the cost of meeting such needs and interests), Comcast's proposal should explain and document the basis for its position.

Ascertainment Documents

A. Community Needs Assessment And Recommendations

Community Needs Assessment And Recommendations Regarding Community Cable-Related Needs And Interests For The Town of Amherst, Massachusetts, January 28, 2006, prepared by Community Media Visioning Partners.

I. INTRODUCTION AND OVERVIEW

II. COMMUNITY CABLE NEEDS AND INTERESTS

A. OVERVIEW AND METHODOLOGY

B. SUMMARY OF VISIONING SESSIONS

C. SUMMARY OF CAPITAL COSTS FOR PRODUCTION & DISTRIBUTION EQUIPMENT

D. SUMMARY OF FOCUS GROUP DISCUSSION AND SURVEYS

III. RECOMMENDATIONS REGARDING COMMUNITY CABLE-RELATED NEEDS AND INTERESTS

A. INTRODUCTION

B. PEG ACCESS

OPERATING AND CAPITAL SUPPORT

C. INSTITUTIONAL NETWORK

APPENDICES

1. PEG and I-Net Visioning Results
2. Community Focus Group Survey Results
3. ACTV Proposal
4. ACTV Ten Year Operating Budget
5. ACTV Capital Equipment Replacement Proposal
6. ACTV Equipment Inventory
7. Support Letters
 - A. Public Access
 - B. Educational Access
 - C. Government Access, Institutional Network and Additional Municipal Issues and Concerns

B. PEG Access Video-On-Demand

1. Cable Franchise Agreement Between City of Dubuque, Iowa and MCC Iowa, LLC (Mediacom), Article/Section 6, including Section 6(a).

(5) Upon the conversion of the entire Cable system to digital transmission or December 31, 2006, whichever occurs first, the Grantee shall provide the City with PEG capacity for video programming that may be accessed by Subscribers through use of standard digital equipment compatible with the Grantee's Cable System using the Grantee's "on demand" capabilities. The grantee shall provide storage capacity of up to twenty hours of on-demand PEG programming at any given time. The City and the Grantee may by mutual agreement arrange for additional capacity on terms to be determined at the time of agreement. If the City wishes to store additional programming on its own servers or facilities, the Grantee shall cooperate with the City in making such additional programming available through the same on-demand methods. Within thirty days after providing such capability, the Grantee shall provide the City with an encoder that may be used to digitize PEG programming for use in this on-demand arrangement.

2. Looking for Love (or a Date) on Cable TV, Wall Street Journal, December 15, 2005.

Dating on Demand is just one of the ways that new technology is reinventing television by making it much easier for individuals and small groups to produce their own videos and get them on TV. In eastern Wisconsin, Time Warner Inc.'s cable system invites homeowners proud of their Christmas-light display to post a video of their homes on the system's Wisconsin on Demand service. Charter Communications Inc., which serves the other half of

Wisconsin, has begun to test local on-demand content there as well as in Worcester, Mass. Charter's local content includes assistance for Hispanic viewers on how to apply for a driver's license.

What makes all this possible is the investment of tens of millions of dollars by Comcast and other cable operators in on-demand technology, which stores video content in central offices that can be accessed over cable lines anytime. Initially designed to enable subscribers to watch movies and TV programs, the technology is now being used to make television down-home and personal in numerous ways.



Besides the dating service, some Comcast systems are offering high-school football games filmed by students and Sunday sermons taped by church officials. One Comcast system is joining with the local humane society to offer a service called Pet Adoptions on Demand. So far, 98 of the 120 dogs and cats featured have found homes. Whether it be singles or sermons, all submissions are screened before being stored.

Time Warner's Wisconsin service includes 125 hours of content from high-school sports to local contests modeled on "American Idol," all of which can be viewed by family and friends anywhere in Time Warner's service area. Viewers have downloaded content from Wisconsin on Demand more than 500,000 times this year, an increase of more than 25% over last year, according to a Time Warner spokeswoman. The service has been so successful that 19 other Time Warner divisions are moving forward with similar efforts, she says.

Comcast offers locally produced fare on demand in more than a dozen of its systems. "There's a whole new opportunity for content that's never been on TV before," says Matt Strauss, Comcast vice president for content development. Comcast doesn't include advertising in any of its local on-demand content, but the company is studying ways to do so.

While some of the locally produced content doesn't get much viewership, some segments are popular. This year, more than 20 million Dating on Demand segments were watched by singles and people wanting to check out the dating scene. ...

Members of the general public have been able for years to get local content on cable via public-access channels. But for many viewers aspiring to be producers, on-demand TV has a greater appeal because it often gets watched more. Viewers don't have to wait for a particular segment to be aired, and they can watch their favorite parts -- like the winning catch in a football game -- over and over using the fast-forward, pause and rewind buttons on their remotes.

The Waukesha Education Foundation in Wisconsin, which has put shows on public-access channels for years, has found that its content often has more impact with on-demand TV, says Jay Walt, the vice president of its board. He notes that public-access channels are limited to single cable systems, while Wisconsin on Demand can be seen throughout half the state. "I've had people in Green Bay calling me to tell me they've seen me," he says.

Cable operators, which tend to regard public-access channels as an obligation, see local on-demand programming as a revenue opportunity. [Emphasis added.] The service is helping persuade subscribers who take the standard analog package of channels for about \$45 a month to upgrade to digital cable, for an additional \$15, which is needed to receive on-demand programming.

With digital upgrades the goal, Time Warner and Comcast have made almost all their local on-demand content available at no charge. There is also typically no charge for singles or others to post their on-demand content, although viewers who want to meet someone they see on Dating on

Demand have to sign up for the online dating service. In the case of HurryDate, that costs \$19.95 a month. (Singles who post a video profile get a free six-month subscription.)

Local on-demand content also is turning into an important competitive weapon for cable operators. Cable companies' biggest competitors, satellite-TV operators, can't offer on-demand content tailored to a particular community. At the same time, on-demand content gives cable operators a way of fending off competition from the Internet, which is already becoming a major distributor of video content.

Partly to stay ahead of the Internet, cable companies are exploring a wide range of other local content to put on demand. Comcast's Philadelphia system is testing a real-estate service. Properties are listed by region and price range, and viewers, with a click of their remotes, can take a video walk-through.

Operators also are steadily upgrading the more popular local on-demand services. Currently, only eight of Comcast's systems allow local singles to produce their own Dating on Demand segments, but Comcast executives say more will be added next year.

Comcast today gets most of its videos by hosting singles events at bars, malls and other venues popular among the unattached. Camera crews are on hand to help singles make a three- to five-minute tape talking about themselves and what they're looking for -- or not looking for -- in a mate.

....

3. How To Watch TV [-] *Flurry of Deals Giving Viewers New Options For Tuning In To Shows; Paying by the Program*, Wall Street Journal, November 9, 2005.

Watching TV used to be the embodiment of mindlessness.

But now, deciding how and what to view is a surprisingly complex task, as a series of industry-transforming deals presents consumers with a host of new viewing options. Each approach requires a different device, and each charges viewers in a different way.

The upshot: It is easier than ever before to watch any show you want anytime you want, instead of watching scheduled shows. The move toward "time shifting" accelerated this week, when two big TV networks, CBS and NBC, agreed to make such prime-time shows as "Survivor" and "Law & Order: Special Victims Unit" available for viewing anytime. The deal comes less than a month after **Apple Computer Inc.** and **Walt Disney Co.** made a deal that allows viewers to download episodes of popular TV shows, including "Desperate Housewives" and "Lost," on a video iPod.

PRIME TIME TO ANYTIME

....

Video on Demand

Cable companies now make movies and other programs available to subscribers who buy a

higher "digital" tier of service, which costs roughly \$10 to \$15 a month extra. To start watching, all viewers have to do is press a few buttons on their remotes, tapping into thousands of hours of content stored in central offices. Viewers usually can reverse, pause or fast-forward the action so they can speed through commercials.

On-demand services have one notable plus: They usually include programs that aren't available on regularly scheduled TV. Operators offer everything from local high-school football games to clips of available singles in the area. Also, many cable operators give a special on-demand benefit to subscribers to premium channels. They can, for example, watch at any time any episode of Rome that's aired on HBO so far this season.

4. TV On-Demand May Make Ads More Targeted, Wall Street Journal, November 9, 2005.

C. Digital Conversion and PEG Access

- King County, Washington, Amendment No. 2 to Franchise Agreement NO. 12131 with Comcast of Washington IV, Inc., dated February 8, 2005.

D. Additional PEG Access Channels and Applications

- Vermont Public Service Board, Rule 8.404 (Activation of Additional PEG Channels or Other PEG Applications) and 8.405 (Consideration of Requests for PEG Channels and Other PEG Applications), revised March 1, 2005.

E. PEG Access - Additional Documents

- Testimony of Brian Roberts, President and Chief Executive officer of Comcast Corporation, United States Senate Committee on Commerce, Science and Transportation, Wednesday, May 12, 2003 - - "Mr. Roberts: Well, first of all, we do have local franchise fees, so there are taxes at stake in this debate as well, because a cable operator gives 5 percent of their revenue to the local municipality, depending on how you define what the service is."
- Comcast Chief Hints At Plan To Compete, Boston Globe, October 7, 2005:

WALTHAM Comcast Corp.'s future in the cable business depends on offering more content to its subscribers, in many cases for free, the company's chief executive, Brian Roberts, said in a speech here yesterday.

Addressing a gathering of local telecommunications executives and investors, **Roberts said his company intends to add hundreds more movies, video clips, and other free content to its OnDemand service in the coming year, stressing that he wanted to "build value" for subscribers, rather than compete for business on price.** His comments, before the annual meeting of the Massachusetts Network

Communications Council, signal Comcast's strategy for competing with Verizon Communications Inc., the telephone and broadband company that has staked much of its future growth on an aggressive push into the pay TV market. Verizon launched the service with a \$39.95 per month expanded basic package in Keller, Texas, two weeks ago, about \$10 below Comcast's comparable digital tier.

"We want to give a great add value to customers. When Hyundai cuts its price, it doesn't make BMW customers switch," Roberts said in one of many swipes he took at Verizon before and after his speech. Verizon debuted its new television service that runs over fiber-optic cables in Keller, a Houston suburb, on Sept. 22.

Last week, the company won permission to roll out the service in Woburn, the first such franchise it has won in New England.

Like cable, Verizon pipes its TV service into customers' homes via underground lines, though it uses a high-speed fiber-optic network, dubbed FiOS, that it also uses to provide high-speed Internet service. The company's expanded basic package includes 180 digital TV and music channels, plus access to 600 video-on-demand movies. Verizon says that will be expanded to 1,800 by year-end.

Comcast offers Massachusetts customers a digital cable package that includes 150 TV channels, about 40 music channels, and includes video-on-demand for \$50 monthly. It sells a bundle of cable, Internet, and telephone service for \$99 monthly.

Still, Verizon spokesman Eric Rabe said his company is not out to force a price war with cable companies. "That's not a matter of undercutting anybody, but having competition prevents a monopoly from doing whatever it wants to do," Rabe said. He said FiOS TV could debut in Woburn by early next year.

Analysts noted that Roberts has long resisted price competition, evidenced by the company's investment of tens of billions of dollars to upgrade its network and offering products like On Demand, high-speed Internet, and phone service, for which it can charge premium rates. Comcast also plans on continually increasing the speed of its Internet service. Right now the company offers a choice of six or eight megabytes per second, but that could reach up to 100 megabytes per second on Comcast's existing network, Roberts said.

Yet some industry watchers said Comcast could still be forced to cut cable rates, at least temporarily. With its fiber network, Verizon is able to offer the same "triple play" bundle of phone, TV, and broadband service as Comcast, something previous competitors haven't been able to match, said Adi Kishore, director of the media practice at Boston research firm the Yankee Group.

"I think it's shaping up to be a good battle," he said. If Verizon gains enough subscribers in Comcast markets, the incumbent cable company might start offering promotional deals, he said.

"They'll say `OK, for two months if you sign on for cable modem service from Comcast, we'll give it to you for \$15.' After two months you bump the price up again and it's a \$45 product."

Roberts also said Comcast needs to do more business with networking and content entrepreneurs. Comcast has had success doing business with networking firms like Cedar Point Communications Inc. in Londonderry, N.H., SeaChange International Inc. of Maynard, and Camiant Inc. of Marlborough, he said.

"You have to have the idea yourself, or you have to buy it or you have to partner with somebody for future growth. We understand that you have to work with entrepreneurs," Roberts said. **[Emphasis added by bold letters.]**

- Cable Rates To Increase As Much as 6% [-] *Comcast Leads Way, but Others Plan Smaller Moves as Competition From Phone Companies Heats Up*, Wall Street Journal, December 1, 2005.

Most Cable-TV bills will continue to climb next year, with **Comcast** Corp., the country's largest cable operator, leading the way with a 6% increase for its most popular service.

But with industry pricing under scrutiny from the federal government and new competition emerging from phone companies, price increases at other large cable companies are expected to be more subdued. **Cablevision Systems** Corp., for example, is raising the price of its standard package, which includes channels like CNN, MTV and ESPN, an average of 1.3% to \$46.73 a month. Cablevision's customers in the New York City region have been targeted by telecommunications giant **Verizon Communications** Inc., to be among the first to be offered its new television service.

Meantime, Cox Communications Inc.'s system in northern Virginia, which also is in Verizon's cross hairs, at this point has no plans to raise rates next year, according to a spokesman. Last year that system increased the cost of its most popular package of analog channels by 3.9% to \$41.99.

- Made-by-Viewers TV [-] *Seeking a Youthful Audience, Little Cable Channel Presents Features Filmed by Neophytes*, Wall Street Journal, December 13, 2005.

What some people really want to do is direct.

After a decade of the Internet revolutionizing the way people communicate and spend their leisure time, a growing number of consumers are going further -- creating entertainment and other media "content" on their own. Cable networks, radio stations -- even advertisers -- are embracing such "user-generated content" and serving it up, hoping to appeal to new and younger audiences that are impatient with standard media fare.

This new genre of Do-It-Yourself Media harks back in some ways to public-access cable TV, to funny home videos and radio call-in shows. But it's slicker and more sophisticated. For a generation of young people raised on the Internet, it is second nature to express themselves in new ways. These aren't passive consumers: They think they have something to say and they

don't see why they can't do what the big media companies are doing.

In a series this week, The Wall Street Journal explores how Do-It-Yourself Media in various forms is creating a kind of parallel media universe. Today's article describes Al Gore's Current TV, which is helping to fill its 24 hours of daily programming with films made by viewers. Subsequent articles will look at how advertisers are soliciting ad ideas from their consumers, how cable operators are asking viewers to contribute material for dating services and real-estate channels and how phone companies are encouraging contributions to video logs.

- Remarks of FCC Commissioner Gloria Tristani made in a speech entitled “Public, Educational, and Government Access Channels: Localism and Diversity In Action” to the Alliance For Community Media on July, 13, 2001.

PEG access is “television by the people and for the people. It represents the purest form of media democracy. Now with the growing consolidation of the media, the role of PEG access is more important than ever.”

Ask your franchising authorities to put a stake in the ground. Encourage them to do what they can to counter the trend toward bigness and sameness by supporting greater resources for PEG access channels.

Channels overlaid with interactive television could gain an artificial advantage over ‘plain old vanilla’ video channels. Another issue ... is the importance of PEG channels receiving accurate listings in the cable operator’s electronic program guide.

... cable operators should use this increased digital capacity to renew their commitment to their communities. The Vermont Public Utilities Commission has taken a significant step in this area by requiring its cable operators to set aside ten percent of their broadband capacity for PEG access services. ... I hope that, at a minimum, digital cable technology will encourage cable operators to allocate more channels to PEG access.

As cable operators get bigger, control over programming will be held by fewer and fewer gatekeepers. For better or worse, the content of television has far more influence on what Americans know what they think, and how they govern themselves than what is on the Internet or in the newspapers.

But the more consolidation that occurs, the greater the value of PEG access programming. PEG access is an antidote to the dangers of cable industry consolidation. The ground-up programming you get when you empower individuals to create their own shows can be a welcome contrast to the top-down, lowest common denominator of network programming.

I also applaud the educational and governmental uses of PEG channels. I have long supported the use of technology to improve education. ... In the same vein, there is little doubt that educational opportunities can be enhanced through education access channels.

And government access channels are, without question, an important exercise of self-governance. C-SPAN is a great contribution that the cable industry has made to Americans.

... The same should be true for local government. Allowing citizens to see their local governments in action is a vital democratic tool. I can think of no more valuable use of the communications media than to strengthen our democracy. Government access channels do that in a profound way. They allow citizens to see parts of their government they had previously only read about, if that. Democracies work best when citizens have more information, not less

And local government is an area where interactive television could add some real value. Reduce the barriers to participation, and you will get more citizen involvement in their local governments than you ever imagined. This is one of the great promises of interactive PEG channels.

- Access Television and The Future of Public Participation” by Hal Conklin, from Western City.com, Summer 2000 regarding the “Civic Television Survey by the California Center For Civic Renewal. (“What would be considered a large viewing audience? Some people argue that at best only 500-1,000 people watch a local access channel, while over-the-air television is attracting 500,000 to 1,000,000 during the same time frame. But, put in perspective of attendance at a local city council meeting, where the attendance often amounts to only a handful of people, 500 to 1,000 people showing up at a council meeting would be a front page story in the local paper. And yet, in many communities, this many people are watching their public meetings on a regular basis.”)

F. Local Emergency Alert

- Memorandum by John Pestle of Varnum, Riddering, Schmidt, Howlett LLP, from the Municipal Research & Services Center of Washington.

[T]he Federal Communications Commission (“FCC”) has rejected a request by broadcasters to preempt cable franchise provisions that require cable systems to carry local emergency announcements. The FCC’s decision referred favorably to the comments filed by the National League of Cities and municipalities and municipal organizations in seven states.

Background: For several years, pursuant to Congressional directive, the FCC has been developing a new, nationwide emergency alert system (EAS System) that replaces, among other things, the old emergency broadcast system. In general, it provides a comprehensive means for providing emergency alerts over radio, TV and cable television systems.

However, the Federal EAS system in general only focuses on national or statewide emergencies. Cable franchises for decades have commonly contained provisions allowing municipalities to use the cable system to notify their residents. This has provided municipalities with a good means to notify residents of local emergencies.

Preemption Petition: This year the National Association of Broadcasters requested the FCC to prevent either Federal or local emergency alert systems from ever interrupting a TV station (if the TV station was capable of carrying emergency announcements). In

particular, the broadcasters asked the FCC to preempt and void all provisions in cable franchises providing for local emergency systems which might interrupt local TV stations. This request would have rendered local emergency alert systems largely ineffective because such local TV stations are the most heavily watched channels. Although the basis for the broadcasters' argument was that local emergency announcements duplicated those provided by TV stations, there is absolutely no assurance that TV stations in fact would carry the local emergency announcement put out by a municipality. By contrast, a municipality by franchise can require a cable company to carry local emergency announcements.

Decision: The decision is short and in our favor. A key portion from it is as follows (in footnotes it cites to the comments we filed setting forth many of the propositions set forth therein):

"13. Decision. After carefully considering the record in this proceeding, we decline to [grant the broadcasters' request] at this time. We agree that many broadcast stations undeniably provide valuable emergency related information and help save life and property. The record suggests however, in certain circumstances, cable systems may be better suited to provide necessary emergency information to local communities. For instance, the record indicates that many local governments view cable television systems as a primary means of notifying residents about local emergencies since municipalities can control such emergency notifications through cable franchise agreements -- control they do not have over broadcasters. The record further suggests that because broadcast stations often serve a wide coverage area crossing hundreds of communities, they may not cover local emergencies that affect only a single community. By contrast, cable franchise agreements frequently require local cable systems to cover all local emergencies. Additionally, many local governments consider cable television systems to be a primary means for alerting local residents of non-weather related emergencies, such as hazardous materials spills or local road restrictions, which tend to affect a more confined area than weather-related emergencies and therefore may not be covered by an area TV station." Third Report and Order, FCC 98-329 (Dec. 14, 1998), Section 13 (footnotes omitted).

Conclusion: The decision is favorable for municipalities and the public interest. Municipalities can continue to require cable systems to carry local emergency announcements from the municipality. We would note that despite the FCC decision, some cable companies are still saying that the Federal EAS system preempts and prevents local emergency alert provisions in cable franchises. This is incorrect.

- Comments of Municipalities and Municipal Organizations Consisting Of National Association of Telecommunications Officers and Advisers, et al., dated October 29, 2004, before the Federal Communications Commission, In the Matter of Review of Emergency Alert System, EB Docket No. 04-296.
- Reply Comments of Municipalities and Municipal Organizations Consisting Of National Association of Telecommunications Officers and Advisers, et al., dated

November 29, 2004, before the Federal Communications Commission, In the Matter of Review of Emergency Alert System, EB Docket No. 04-296.

X

*FCC 98-329 In the Matter of Amendment of Part 73, Subpart G, of the
Commissions Rules
Regarding the Emergency
Broadcast System. FO
Docket 91-301 and FO
Docket 91-171: Third Report
and Order.*

10. The National League of Cities states that one vital public safety function of local government is immediate notification to the public of local emergencies and that cable television systems are a prime means for local public safety officials to notify residents of an emergency.⁴⁰ They additionally note that cable franchise authorities typically provide for Local Emergency Notification Systems that are used by local public safety authorities for a wide variety of local emergencies such as toxic chemical spills or local road restrictions that may not be covered by a television station.⁴⁰ Further, the National League of Cities claims that thousands of lives will be lost if Local Emergency Notification Systems cannot be used in local emergency situations.⁴¹

The FCC Local and State Government Advisory Committee (LSGAC) echoed similar concerns.⁴² According to the LSGAC, the present system, which allows brief interruption of all cable programming to deliver emergency messages, is critical in assisting local government to quickly reach large groups of people during emergency situations. LSGAC contends that selective override would "result in dilution of the government's ability to circulate public safety bulletins to the public" and would have a "detrimental effect on local government's ability to address public safety issues."⁴³ LSGAC contends that "the individual franchising authority is in the best position to decide what emergency message to convey" to the local community.⁴⁴ LSGAC also points out that the present emergency alert system "does not provide for an extended, unilateral takeover of a broadcast, preempting programming for an entire day or evening."⁴⁵ Rather, according to LSGAC, the two minute messages relayed by cable operators "are not unreasonable impositions on broadcasters, considering the importance of the public hearing the message."⁴⁶ LSGAC states that the "message from the government is important, not how the broadcasters dress it up" and that current regulations do not prevent broadcasters "from delivering the glossy message that is discussed in their filings."⁴⁷ ...

11. The National League of Cities also argues that the Commission has no statutory authority to preempt existing cable franchise provisions requiring all channel Local Emergency Notification Systems.⁴⁸ They contend that cable television franchise renewals are governed by Section 626 of the Cable Act and that a community's determination that an all-channel Local Emergency Notification System is necessary to meet community needs and interests is dispositive unless appealed to the local courts.⁴⁹ ...

✦ *Decision.* After carefully considering the record in this proceeding, we decline to mandate selective channel overrides at this time. We agree that many broadcast stations undeniably provide valuable emergency related information and help save life and property. The record suggests however, in certain circumstances, cable systems may be better suited to provide necessary emergency information to local communities. For instance, the record indicates that many local governments view cable television systems as a primary means of notifying residents about local emergencies since municipalities can control such emergency notifications through cable franchise agreements.⁵³ control they do not have over broadcasters.⁵⁴ The record further suggests that because broadcast stations often serve a wide coverage area crossing hundreds of communities, they may not cover local emergencies that affect only a single community.⁶⁰ By contrast, cable franchise agreements frequently require local cable systems to cover all local emergencies.⁶¹ Additionally, many local governments consider cable television systems to be a primary means for alerting local residents of non-weather related emergencies, such as hazardous materials spills or local road restrictions, which tend to affect a more confined area than weather-related emergencies and therefore may not be covered by an area TV station.⁶² Whether selective override is beneficial may depend upon local facts and circumstances. For that reason, we believe voluntary selective override is preferable to a mandatory scheme. As held in the *First R&O*, the Commission currently regulates only National emergency messaging under the EAS.⁶³ State and local EAS messages may be sent on a voluntary basis when the EAS system is not in use during National emergencies.⁶⁴ Neither NAB nor any commentators supporting NAB's proposal have raised a compelling basis for changing our policy by regulating local EAS messages through mandatory selective override.

63 Report and Order and Further Notice of Proposed Rule Making (First R&O), Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994)., at 1809

64 Sections 11.51(a),11.51(g) and 11.51(h) 47 C.F.R. §§ 11.51(a), 11.51(g), 11.51(h), specifies that all EAS participants transmit EAS National messages and EAS tests.

X *FCC 97-338 In the Matter of Amendment of Part 73, Subpart G, of the Commissions Rules Regarding the Emergency Broadcast System, FO Docket 91-301 and FO Docket 91-171: Second Report and Order.*

Paragraph 1, final sentence

We also clarify that requirement of existing local franchise agreements for special warning systems will not be preempted by the EAS as long as they do not conflict with EAS require- ments under our rules.” ...

Paragraphs 33

33. *Decision.* We see no reason to preempt existing franchise agreements that require emergency alerting for local conditions specific to a community such as proximity to nuclear power plants or locations on flood plains. We believe that franchising officials are most familiar with local conditions and threats to their communities as well as the types of emergency information needed to respond to such threats. They are also best suited to work within their communities to develop state and local emergency alerting plans. However, as we discuss in ¶¶ 0 and 0, *infra*, we are concerned about possible conflict between requirements of local jurisdictions and federal regulations regarding the EAS rules. Consequently, we will not preempt a local jurisdiction's ability to negotiate for higher EAS standards in the franchising or franchise renewal process. Should any local jurisdiction's EAS requirements conflict or interfere with those adopted by the Commission, however, the local jurisdiction's requirements will be preempted.⁹⁹ Additionally, we will permit the use of EAS header codes to be included in franchise agreements.¹⁰⁰ Further, although we encourage local authorities to use the EAS to alert the public of emergency situations through cable systems and encourage cooperation between local officials and the local cable operators for this purpose, we note that there is no Federal mandate that unilaterally imposes requirements to install EAS equipment before the dates established by the Commission.

X *FCC 95-420 In the Matter of Amendment of Part 73, Subpart G, of the Commissions Rules Regarding the Emergency Broadcast System. FO Docket 91-301 and FO Docket 91-171: Memorandum Opinion and Order.*

23. NAB, however, cites the language of the House Report, referring to the cable system acting like a broadcaster, as a reason why interruption should not be allowed. n52 NAB argues, therefore, that cable systems should be permitted only to override the audio and interrupt the video on channels that are not retransmitting broadcast signals. We disagree. Under EBS, broadcasters must override the audio and interrupt the video of all channels. Therefore, we believe that permitting cable systems to override the audio and interrupt the video on all channels, including those transmitting broadcast signals is necessary to make the function of the cable system "similar to that of a broadcaster" for emergency alert purposes, as mandated by Congress. The requirement of the EAS for interruption of retransmission of broadcast signals is necessary to fulfill the mandate that cable operators comply with standards to insure that all cable subscribers get the same emergency information as broadcast viewers receive. ...

24. *Decision. Must Carry.* We also do not believe that our EAS requirement for interruption of broadcast signals conflicts with our must carry rules. The must carry provisions at issue state: "Cable operators shall carry the entirety of the program schedule of any television station carried unless carriage of specific programming is prohibited" 47 C.F.R. § 76.62(a). Also, "each commercial broadcast station carried pursuant to § 76.56 shall include in its entirety the primary video, accompanying audio" 47 C.F.R. § 76.62(e). In reaching

this conclusion we have reviewed our previous decision on a similar question in *Total Television of Amarillo*. In that case we addressed the request of a cable television system operator for a waiver of the provision that requires certain local broadcast signals to be carried on the cable system "without material degradation in quality and that the programs broadcast must be carried in full, without deletion or alteration of any portion." n53 The waiver was requested so that the cable system could conduct 30 second tests of its emergency alert system at 3:00 PM on the last Friday of each month. n54 We ruled that it was not the intent of the must carry rules to prohibit such emergency transmissions and that a waiver was not necessary. We conclude that the public benefit of insuring an operational emergency alert system outweighs the possible harm done by momentarily interrupting the broadcast signals carried by the cable television system. Accordingly, as long as the tests are no longer than 60 seconds, occur at regularly scheduled intervals, and are uniform in their interruption of all broadcast signals carried on the cable television system *Total Television* and all similarly situated systems may proceed with the development of such emergency alert systems without further Commission authorization. n55

Our current must carry rules are essentially the same as the rules in effect at the time of our

Total Television of Amarillo decision. Specifically, they require that the cable system "carry the entirety of the program schedule of any television station carried unless carriage of specific programming is prohibited," 47 C.F.R. § 76.62(a), and "include in its entirety the primary video, accompanying audio," 47 C.F.R. § 76.62(e). These must carry provisions apply to programming as a whole and ensure that none of its constituent parts audio or video, as a whole, are deleted. The must carry provisions do not address the audio override or video interruption for purposes of emergency alerting. We conclude, therefore, that our analysis in *Total Television of Amarillo* is still valid, and we reject NAB's assertion that the must carry rules preclude audio override or video interruption. Further, given this analysis, NAB's request that we invalidate individual agreements between cable operators and franchisors such as those envisioned in *Total Television of Amarillo* is inapt, and we deny the petition of NAB to delete the audio override and video interrupt provisions of our rules. The history of the must carry rules was reviewed in the legislative history to the Cable Act. The Committee shows concern about what it terms our refusal to appeal the Quincy decision. Then it goes on to say, "The Committee strongly supports reinstitution of the must carry requirements." See S. Rep. No. 92, 102d Cong., 2d Sess. at 38 -- 41, reprinted in 1992 U.S. Code Cong. & Admin. News 1133, 1171--1174. Id. at 41, 1992 USCCAN at 1174. Section 4 of the Cable Act added Section 614 to the Communications Act and codified must carry rules. See 47 U.S.C. § 534.

X *FCC 94-288 In the Matter of Amendment of Part 73, Subpart G, of the Commissions*

Rules Regarding the Emergency Broadcast System. FO Docket 91-301 and FO Docket 91-171: Report and Order Further Notice of Proposed Rule Making.

55. NCTA noted that “[S]ome cable systems have already deployed emergency alerting equipment in their headends pursuant to local franchise requirements. The Commission should ensure that this embedded base of equipment is not rendered obsolete by developing an EBS device that bridges the existing equipment with the new equipment.”⁶³

58. We therefore require cable systems to maintain EAS equipment in accordance with the rules we adopt in this Order (See Appendix E). For national emergencies, we are requiring compulsory retransmission of Presidential EAS messages. Cable systems must interrupt all channels and provide information to subscribers. Although not required, we also encourage EAS activation for state or local emergencies. ...

64. In the NPRM/FNPRM we envisioned a device that would have allowed cable systems to monitor for DTMF alert signals from a touch-tone telephone.⁶⁴ In view of our decisions to use a standard digital protocol to perform the EAS alerting function, we do not think it is possible to use DTMF as a means of alerting cable systems of an emergency. It is critical that cable be interoperable with other EAS delivery systems. We do not want to overlook the current usefulness of DTMF, however, or clash with existing emergency system capability. DTMF codes may be used if converted to the EAS code protocol, so that the new EAS equipment may receive the decoded DTMF messages. ...

153. Potential preemption of state and local standards. The rules we adopt today serve only as a floor for cable systems’ participation in the EAS. Our EAS rules only require national emergency announcements. Over 4,000 cable systems, however, have local emergency announcement requirements in their franchises. Many local jurisdictions, such as those near nuclear power plants or on flood plains, may have special emergency alerting needs. We encourage local officials to permit cable operators to remove equipment installed under local franchising agreements and convert to EAS equipment. We seek further comment as to whether the existence of conflicting requirements imposed by local franchising authorities poses any threat to the federal objective of maintaining EAS nationwide alerting capability and, if so, whether we should preempt application of these conflicting requirements.

X “Police take to the air” [Town of Natick], *MetroWest Daily News*, May 4, 2004.

NATICK -- There are no turntables or microphones, but the Natick Police Department has entered the world of radio after buying a frequency to broadcast emergency announcements across town.

The Natick Emergency Radio Network went on the air last week, broadcasting traffic alerts

⁶³Comments of NCTA, November 12, 1993 at 2.

⁶⁴See NPRM/FNPRM, para 52.

for construction downtown.

In the future, the station, AM-1630, will be used to notify the public of everything from weather emergencies to possible terrorist attacks.

"If it happened anywhere in the Greater Boston area, we'll let people know," Police Chief Dennis Mannix said.

Mannix called the station "one of the most important things we've installed for providing information to the public locally."

"It's an effective way of communicating," Mannix said. "If people are out driving, you can keep them from getting unnecessarily involved in whatever is going on."

The 10-watt station will broadcast within a 3-mile radius of the police station, an area that includes almost all of Natick. Messages are recorded on a looping track, which can be up to 14 minutes long.

The station may be used for snow day announcements, Amber Alerts and other town information, but emergency messages will take precedence, Mannix said.

The department used \$22,000 of a grant from the federal Department of Homeland Security to buy and install the equipment. The money went toward buying the frequency, an antenna and receiver setup and licensing through the Federal Communications Commission.

Natick may be the first MetroWest police department to operate a radio signal available to the public. In Framingham, officers use radio to communicate to each other, but not with the public, police said. The department uses its Web site to get messages out.

Ashland Police Lt. Scott Rohmer said that department uses the news media to inform the public of emergencies.

Many cities and towns are working on a reverse 911 system, where a message could be broadcast over the phone to the people it should reach. A local phone database allows police to target certain areas or send calls to every home in the area.

"Of course there are limitations -- you have to have a phone and phone service has to be up and running -- but we can spread the word that way," said Marlborough Police Chief Mark Leonard. "We really hope to get that fully operational soon."

Mannix said he had been looking at other public notification systems, including posting messages on a local cable television station, for a long time.

"In the case of an emergency, you need a way to let the most people know what's going on without causing chaos," he said. "This is a good solution."

- X *Town of Dartmouth, Renewal Cable Television License Issued To Comcast of Southern New England, Inc, Renewal Term Commencing on September 6, 2003, Section 3.18 - Emergency Alert System.*

SECTION 3.18 – EMERGENCY AUDIO ALERT

- The Licensee shall provide an emergency audio alert system. This system will enable the Issuing Authority or his/her designee to gain access into the Cable System by using any touch-tone telephone to override channels on the subscriber network with the emergency telephone message, however, the Issuing Authority shall hold Licensee harmless for liability arising from the Issuing Authority's or Town's negligent or wrongful use of said emergency alert system. The Issuing Authority further acknowledges that in the event that Town of Dartmouth use of the Town emergency override causes an override of or interference with a national emergency alert, Licensee shall not be considered responsible for same. The audio alert shall be effective over the maximum number of channels that can be overridden through available equipment for such purposes. In addition, the Subscriber Network shall comply with the FCC's Emergency Alert System ("EAS") regulations..
- City of Elgin, Illinois Cable Franchise Agreement With Comcast of Illinois/West Virginia, dated April 28, 2004.

G. Indemnification

- Letter from Alan Seewald, Town Counsel to William Venman, dated January 27, 2006.

In addition, I am informed that there is an increasing trend in which providers are attempting to limit or reduce the indemnification/hold harmless provision of a standard service contract. In particular, providers are attempting to place restrictive time frames or notice provisions into the indemnity provision of the contract. These requirements seek to limit or void the indemnity obligation of the provider if notice is not provided within a short window of time.

While these restrictions may not be unreasonable in a conforming commercial application, they are not favorable to municipal entities. In general, the modified indemnification agreements seek to hold the parties to a ten-day notice provision. The contract suggests that if notice is not provided to the service provider within ten days of receipt of a claim, the provider has no obligation to indemnify the municipality. The wide range of responsibilities, obligations, departments and personnel with which municipalities must deal makes acceptance of such a short notice window ill advised. In addition, it is possible that a municipality could receive a very short general notice of loss and not be aware of the potential indemnity due for a contractor until well after this short notice period has lapsed. Finally, claims for insurance subrogation or contribution against the service provider may be compromised if a municipality fails to recognize the short notice provision. In such circumstances, that notice provision may lapse months or years before the subrogation or contribution claim matures.

I believe it prudent for municipalities to seek to remove, wherever possible, restrictive notice provisions from contracts with their service providers.

H. Recomputation/Audits

- Letter from Constance T. Cannady, President, C2Consulting Services, Inc. to Philip McCarthy, Chairman, Cable Advisory Committee regarding limitations on municipal

right to review payments from cable operators.

- Article from the Indianapolis Star (on Indystar.com), dated March 15, 2004, and titled “Comcast makes good on underpaid fees”.
- Article from Multichannel News, dated April 26, 2004, entitled “Cities: Auditing for Dollars Makes Sense”.

I. Performance Bond

The performance bond amount should reflect the costs and/or damages the Town may face with respect to a failure of the Licensee to meet License and/or legal requirements, including, if necessary, the cost of removal of a material portion of the cable system.

- Letter from Andrew Afflerbach, Columbia Telecommunications Corporation, dated January 27, 2006.

J. Compliance with Applicable Law

- Letter from Alan Seewald, Town Counsel to William Venman, dated January 27, 2006.

The Licensee should be obligated under the Renewal License to comply with all applicable federal and state laws and regulations, and all town bylaws and regulations. The Licensee is, of course, entitled at any time, to challenge the legality or constitutionality of any such law, bylaw or regulation. The Renewal License should not provide, as is sometimes suggested by the Licensee in certain other communities, that it must comply only with lawful laws, bylaws or regulations. The Town is prepared to provide a provision in the Renewal License that a failure to comply with a law or regulation that is subsequently found to be unlawful or unconstitutional will not, after such legal finding is made, be deemed to be a breach of the Renewal License.

K. FCC Regulatory Fee

The FCC Regulatory Fee is not a “franchise fee” as defined by federal law (47 U.S.C. 542 - “(1) the term “franchise fee” includes any tax, fee, or assessment of any kind imposed by a franchising authority or other government entity on a cable operator or cable subscriber, or both, solely because of their status as such”). The FCC fee is a regulatory fee, and as such a cost of doing business for a cable operator.

“In the Matter of Proper Treatment of FCC Regulatory Fees Under 47 U.S.C. §542(g)”

1. Petition for Declaratory Ruling In the Matter of Proper Treatment of FCC Regulatory Fees Under 47 U.S.C. 542(g) by NATOA, April 22, 2004.

2. FCC Public Notice, Media Bureau Action - Franchise Fee Petition for Declaratory Ruling Filed With the Commission - CSR 6324, April 30, 2004.
3. Comments of City of New York and City of Eugene Oregon, "In the Matter of Proper Treatment of FCC Regulatory Fees Under 47 U.S.C. §542(g)", June 1, 2004.

L. Proposed Renewal Cable Television License

- Proposed Renewal Cable Television License Granted To Comcast of Massachusetts II, Inc.

**Brief Comments Regarding Certain Future
Cable-Related Community Needs and Interests**

The Town makes the following brief comments regarding a few of the community needs and interests addressed in the draft Renewal License.

- The Town should incur no cost as a result of the use of the rights-of-way by the Licensee. The Licensee should use the rights of way in a manner that minimizes the risk of damage and undue interference with the beneficial use and enjoyment of public and private property. The Licensee's use is secondary and no property rights or any other implied rights are being granted. Right-of-way use should be subject to conditions that ensure that Town policy (e.g. undergrounding of utilities and facilities) can be satisfied.
- The Licensee must be obligated to restore any real or personal property damaged by the Licensee to the same condition that it was in prior to the damage and to fully compensate the damaged party. This must also include private parties so damaged.
- There is a community need and interest for a full service local business/customer service office in the Town of Amherst.
- The Licensee should be subject to clear requirements for demonstrating compliance with its License and all legal requirements, including the provision to the Town of all relevant documents and information. The Town should have the right to perform any test needed to determine such compliance. No documents or information reasonably needed by the Town to determine the Licensee's compliance with the License and applicable legal requirements should be withheld from the Town.
- The Town should have effective tools to monitor, enforce, and ensure full compliance with License, legal and regulatory requirements.

- Liquidated damage amounts and the performance bond should reflect the monetary damages the Town may face with respect to a failure of the Licensee to meet License and/or legal requirements, and realistically discourage such failures.
- The Town has reluctantly included a so-called “Level Playing Field” in the Proposed Renewal License. Section applies to the Licensee with respect to additional cable licenses granted by the Town (through its Issuing Authority). The Town will not agree to this type of provision with respect to multi-channel video providers which the Town does not license. The legal rights, if any, of a cable operator with respect to competition are governed by the Cable Act (i.e. commercial impracticability). Accordingly, the Licensee should not include any such provision in its Proposal. If, however, the Licensee includes such a provision in its Proposal, it should describe in detail the reasons for the inclusion of such a provision and the legal basis for its position that such a provision can and should be included in a Renewal License. It should be understood that the inclusion of such a provision may be deemed to be of such significance to the Town, that together with other factors, may warrant a preliminary assessment that the franchise should not be renewed.
- The privacy and privacy rights of subscribers and residents must be fully protected by the License protected both in policy and in practice.
- The Licensee’s obligations under the Renewal License should and must be guaranteed by the Licensee’s ultimate parent corporation.

Please note that the community need and interest for a meaningful senior discount to the Town of Amherst’s senior citizens, age 65 and older. However, because the Town anticipates that the senior discount - which is authorized by the Cable Act, but is a voluntary act of the cable operator - will be addressed outside of the Renewal License. Accordingly, further information and documents in support of the senior discount will be provided outside of the license renewal context.

IX. CONCLUSION

The Town looks forward to receiving a Proposal that fully and completely responds to this RFP. The Town is hopeful that a Renewal License that meets “future cable-related community needs and interests, taking into account the cost of meeting such needs and interests” can be achieved.